

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
COMMERCEWEST BANK,  
  
Defendant.

No.: CV-15-00379

CONSENT DECREE FOR  
PERMANENT INJUNCTION AND  
CIVIL MONEY PENALTY

**WHEREAS**, plaintiff United States of America (the “United States”) commenced this action against defendant CommerceWest Bank, (“Defendant” or the “Bank”) by filing a civil Complaint seeking a civil money penalty pursuant to the Financial Institutions Reform, Recovery and Enforcement Act, 12 U.S.C. § 1833a (“FIRREA”) and an injunction pursuant to 18 U.S.C. § 1345 and the court’s equitable powers;

**WHEREAS**, Defendant waives service of the Complaint;

**WHEREAS**, the United States and Defendant stipulate to entry of this Consent Decree for Permanent Injunction and Civil Money Penalty (“Consent Decree”) to resolve the claims in the Complaint;

**NOW, THEREFORE**, the parties hereby AGREE and it is ORDERED as follows:

**I. FINDINGS**

A. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1345 (United States as plaintiff). Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391(b) because Defendant operates and maintains management offices and operations centers in this

1 district, and a substantial part of the events or omissions giving rise to the claims  
2 alleged in the Complaint occurred in this district.

3 B. The United States alleges in the Complaint violations of FIRREA,  
4 12 U.S.C. § 1833a, and seeks injunctive relief pursuant to 18 U.S.C. § 1345.

5 C. This Consent Decree is neither an admission of liability by Defendant,  
6 nor a concession by the United States that its claims are not well founded. Only for  
7 purposes of this action, Defendant admits that the Court has jurisdiction as to  
8 Defendant and as to this action.

9 D. Defendant knowingly and voluntarily waives any claim that it may  
10 have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the  
11 prosecution of this action through the date of this Consent Decree, and agrees to bear  
12 its own costs and attorneys' fees. Should the United States bring, and prevail in, a  
13 contempt action to enforce the terms of this Consent Decree, Defendant shall, in  
14 addition to other remedies, reimburse the United States for its attorneys' fees,  
15 investigational expenses, expert witness fees, travel expenses incurred by attorneys  
16 and witnesses, administrative and court costs, and any other costs or fees, including  
17 overhead, related to such contempt proceedings.

18 E. Defendant waives all rights to appeal or otherwise challenge or contest  
19 the validity of this Consent Decree.

20 **II. DEFINITIONS**

21 For purposes of this Consent Decree, the following definitions apply:

22 A. "Automated Clearinghouse" or "ACH" means a facility that processes  
23 debit and credit transfers under rules established by a Federal Reserve Bank  
24 operating circular on automated clearinghouse items or under rules of an automated  
25 clearinghouse association, such as NACHA, as further defined in and governed by  
26 Regulation CC, as amended, 12 C.F.R. Part 229.

1       B.     “Internet-based Business” means any entity that markets, offers, or  
2 provides products or services, and that accepts authorizations for transactions from  
3 consumers, exclusively via the Internet.

4       C.     “Merchant” means any entity that markets, offers, or provides products  
5 or services, and that accepts authorizations for financial transactions from  
6 consumers.

7       D.     “Originating Depository Financial Institution” or “ODFI” means a  
8 depository financial institution that has made an arrangement with another entity to  
9 transmit ACH, RCC, or RCPO entries into a payment system on behalf of that entity  
10 or another entity, or transmits such entries into a payment system on its own behalf.

11       E.     “Permitted Change of Control” means any of the following transactions  
12 between the Bank and a Qualified Acquirer: (i) any merger, recombination,  
13 recapitalization or other reorganization, immediately following which the holders of  
14 the Bank’s capital stock cease to own at least a majority of the capital stock of the  
15 surviving entity or resulting bank as measured immediately after such transaction;  
16 (ii) the acquisition, in one transaction or a series of related transactions, of shares of  
17 capital stock representing more than 50% of the combined voting power of the  
18 Bank’s capital stock; or (iii) the acquisition, in one transaction or a series of related  
19 transactions of all or substantially all of the assets of the Bank.

20       F.     “Qualified Acquirer” means any bank, bank holding company or  
21 financial holding company (as such terms are defined for purposes of the Bank  
22 Holding Company Act of 1956, as amended) that has (or, in the case of a bank  
23 holding company or financial holding company, whose principal subsidiary bank  
24 has) a composite rating of “satisfactory” or “2” or higher under the Uniform  
25 Financial Institutions Rating System, and which is (or, in the case of a bank holding  
26 company or financial holding company, whose principal subsidiary bank is) both  
27 “well capitalized” and “well managed” within the meaning of the Federal Deposit  
28 Insurance Act.

1           G.     “Remotely-created Check” or “RCC” means a check that is not created  
2 by the paying bank and that does not bear a signature applied, or purported to be  
3 applied, by the person on whose financial account the check is drawn, as further  
4 defined in and governed by Regulation CC, as amended, 12 C.F.R. Part 229. A  
5 Remotely-created Check is often also referred to as a “demand draft,” “bank draft,”  
6 “bank check,” or “preauthorized draft.” For purposes of this definition, an RCC  
7 originates as a paper-based transaction, and can be processed subsequently through  
8 electronic means (such as through check imaging or scanning), or through  
9 non-electronic means.

10           H.     “Remotely-created Payment Order” or “RCPO” means a payment  
11 instruction or order drawn on a person’s financial account that is initiated or created  
12 by the payee and that does not bear a signature applied, or purported to be applied,  
13 by the person on whose financial account the order is drawn, and which is deposited  
14 into or cleared through the check clearing system. For purposes of this definition,  
15 unlike a Remotely Created Check, a Remotely Created Payment Order does not  
16 originate as a paper-based transaction. A RCPO is created when a seller, merchant,  
17 payment processor, or other entity enters financial account and routing numbers into  
18 an electronic check template that is converted into an electronic file for deposit into  
19 the check clearing system.”

20           I.     “Return Rate Threshold” means, for any merchant with more than 50  
21 debit transactions in a calendar month, a debit return ratio during that calendar  
22 month of:

- 23                   1.     one-half of one percent (0.5%) for Unauthorized returns  
24 (NACHA Reason Codes R05, R07, R10, R29, R37, and R51);  
25                   2.     three percent (3%) for Account Data Quality returns (NACHA  
26 Return Reason Codes R03, R04, or R20); or  
27                   3.     fifteen percent (15%) for returns for any reason (excluding  
28 RCK entries).

1 J. “Telemarketing” means a plan, program, or campaign which is  
 2 conducted to induce the purchase of goods or services or a charitable contribution by  
 3 use of one or more telephones, whether or not covered by the Federal Trade  
 4 Commission Telemarketing Sales Rule, 16 C.F.R. Part 310.

5 K. “Third-party Payment Processor” means: (a) a non-financial  
 6 institution entity or person that is a customer or vendor of a financial institution and  
 7 that holds a deposit account at that financial institution directly or on behalf of its  
 8 merchant clients (except entities and persons that have an express agency agreement  
 9 with a financial institution); (b) that provides, directly or indirectly, the means used  
 10 to debit accounts through credit cards, the ACH network, or the check payment  
 11 system, through that financial institution acting as the ODFI; and (c) that is, in whole  
 12 or in part, in the business of (i) providing the means to transmit money from a  
 13 financial institution to any merchant; (ii) providing the means to transmit  
 14 transaction data from merchants to financial institutions; (iii) transmitting,  
 15 clearing, settling, or distributing proceeds of transactions from financial institutions  
 16 to merchants; or (iv) processing returned transactions for merchants.

### 17 **III. PROHIBITED CONDUCT**

18 **IT IS ORDERED** that the Bank, its officers, agents, servants, employees,  
 19 contractors, and attorneys, and all other persons in active concert or participation  
 20 with any of them who receive actual notice of this Consent Decree, whether acting  
 21 directly or indirectly, are in connection with any activities conducted by or through  
 22 the Bank **PERMANENTLY RESTRAINED** and **ENJOINED** from:

23 A. Providing bank accounts or banking services to any Third-party  
 24 Payment Processor, except where the Bank certifies to the United States before the  
 25 start of banking activity, and thereafter, in accordance with Section IV., below, that  
 26 the Third-party Payment Processor is: (i) licensed as a money transmitter in the  
 27 state(s) into and from which money is transferred, or has provided to the Bank  
 28 documentation created by state licensing authorities stating that no state licensing is

1 required; and (ii) registered with the Financial Crimes Enforcement Network of the  
2 U.S. Department of the Treasury (“FinCEN”) as a “Money Services Business,” or  
3 has provided to the Bank documentation from FinCEN stating that no registration is  
4 required.

5 B. Delegating to a Third-party Payment Processor responsibility to  
6 conduct due diligence (including but not limited to Customer Identification Program  
7 requirements under 31 C.F.R. § 1020 et seq.) and monitoring of the Third-party  
8 Payment Processor’s merchants, or conducting due diligence and monitoring in any  
9 respect differently than would be required if the merchants were direct customers of  
10 the Bank.

11 C. Providing ACH services, access, or processing, to any merchant  
12 engaged in Telemarketing or Internet-based Business, directly or through a  
13 Third-party Payment Processor, except where the Bank, in advance of providing  
14 bank accounts or banking services and quarterly thereafter, has:

15 1. completed all due diligence and underwriting of the merchant as  
16 would be required of the Bank if the merchant was a direct customer of the Bank;

17 2. established, after reasonable inquiry, in good faith, and to the  
18 best of the Bank’s ability and knowledge, that the merchant is not engaged in  
19 fraudulent, unfair, deceptive, or abusive business practices against consumers in  
20 violation of federal law or any such law of the state(s) (or tribal territory) in which  
21 the merchant is located, and any law of the state(s) (or tribal territories) in which the  
22 merchant’s consumers are located;

23 3. established, after reasonable inquiry, in good faith, and to the  
24 best of the Bank’s ability and knowledge, that the merchant is in compliance with:  
25 (a) all licensing requirements, registration requirements, and legal standards relating  
26 to fraudulent, unfair, deceptive, or abusive business practices of the state(s) in which  
27 the merchant is located (or if the Bank has independently established that the  
28 merchant is a tribal business, exclusively owned, operated by, and benefitting a

1 federally-recognized sovereign Native American nation, the laws of that Native  
2 American nation); (b) all licensing requirements, registration requirements, and  
3 legal standards relating to fraudulent, unfair, deceptive, or abusive business  
4 practices of the states (or tribal territories) in which each of the merchant's  
5 consumers reside; and (c) the rules of NACHA, the Electronic Payments  
6 Association; and

7 4. memorialized in writing the conclusions of the activities in  
8 subparagraphs 1 through 3, and notified the United States that such information is  
9 available to the United States for inspection.

10 D. Providing bank accounts or banking services to any Third-party  
11 Payment Processor that processes payments for any merchant that has surpassed the  
12 Return Rate Threshold; unless, within 45 days after the merchant has surpassed the  
13 Return Rate Threshold, the Bank certifies to the United States (in accordance with  
14 Section IV, below) that the Bank has:

15 1. completed all due diligence and underwriting of the merchant as  
16 would be required of the Bank if the merchant was a direct customer of the Bank;

17 2. sampled consumers by: (a) individually or jointly with the  
18 merchant, directly communicating by telephone with no fewer than twenty-five  
19 consumers of the merchant selected by the Bank who purportedly purchased the  
20 merchant's goods or services within the previous three months, and inquired of the  
21 consumers whether the consumers knowingly authorized debits by the merchant and  
22 whether the consumers believe they were the victim of fraud or abusive practices by  
23 the merchant; and provided the merchant's name and address, and the 25 or more  
24 consumers' names and telephone numbers, to the United States; or (b) another  
25 method of consumer sampling agreed upon in writing by the Bank and the United  
26 States.

27 3. established, after reasonable inquiry, in good faith, and to the  
28 best of the Bank's ability and knowledge, that the merchant is not engaged in



1 fraudulent, unfair, deceptive, or abusive business practices against consumers in  
 2 violation of federal law or any such law of the state(s) (or tribal territory) in which  
 3 the merchant is located, and any such law of the state(s) (or tribal territories) in  
 4 which the merchant's consumers are located;

5 4. memorialized in writing the conclusions of the research and due  
 6 diligence required under this paragraph; and

7 5. notified the Bank's Board of Directors of the merchant's  
 8 identity, due diligence results, total and unauthorized return rate history, and results  
 9 of consumer sampling.

10 If the Bank establishes that the merchant has been engaged in fraudulent,  
 11 unfair, deceptive, or abusive conduct against consumers, or elects not to conduct the  
 12 activities in subparagraphs 1 through 5 and instead to discontinue providing bank  
 13 accounts or banking services to such merchant, the Bank shall within three business  
 14 days cease all debiting of consumers' bank accounts, and shall terminate all banking  
 15 services to such merchant of the Third-Party Payment Processor no later than 45  
 16 days after the merchant of the Third-party Payment Processor has surpassed the  
 17 Return Rate Threshold except that nothing in this Consent Decree shall prevent the  
 18 Bank from holding funds from such merchant, for up to 12 months, to be used to  
 19 cover returned items by consumers who conducted transactions with such merchant.

20 E. As an ODFI, accepting from a customer or Third-party Payment  
 21 Processor any RCCs or RCPOs in connection with Telemarketing or Internet-based  
 22 Businesses, unless authorized in advance by the United States.

23 F. Continuing to process payments or provide banking services to any  
 24 entity that the Bank has reason to believe is engaged in any unlawful or otherwise  
 25 deceptive practices harming consumers.

#### 26 **IV. CERTIFICATION REQUIREMENTS**

27 A. Beginning six months after the entry of the Consent Decree, and  
 28 continuing every six months thereafter, the Bank shall certify that it is in compliance



1 with the Consent Decree. The certification shall be in the form of the “Consent  
2 Decree Compliance Certification” attached hereto as Exhibit A.

3 The Consent Decree Compliance Certification and all other certifications required  
4 under the Consent Decree shall be in writing, executed by a Bank official with  
5 authority to bind the Bank, and executed in accordance with 28 U.S.C. § 1746.

6 For five years from the date of the Court’s entry of the Consent Decree, the Consent  
7 Decree Compliance Certification and all other certifications required under the  
8 Consent Decree shall be delivered to the United States within fifteen days of the date  
9 of the certification.

10 B. Beginning six years after the date of the Court’s entry of the Consent  
11 Decree until the tenth anniversary of the Court’s entry of the Consent Decree, the  
12 Consent Decree Compliance Certification and all other certifications required under  
13 the Consent Decree shall be maintained by the Bank and shall remain available for  
14 inspection by the United States upon reasonable request.

15 C. After ten years of the Court’s entry of the Consent Decree, the Bank  
16 shall not be required to certify compliance with the Consent Decree, but shall  
17 continue permanently to be required to comply with all other terms of the Consent  
18 Decree.

19 **V. TERMINATION UPON PERMITTED CHANGE IN CONTROL**

20 If the Bank undergoes a Permitted Change of Control, then Sections III, IV,  
21 XII, XIII, XIV and XV of this Consent Decree will automatically terminate, unless  
22 the new entity resulting from the Permitted Change of Control retains Commerce  
23 West Bank employees, officers or directors who, from November 2011 to June  
24 2013, had authority over onboarding, monitoring, due diligence or termination of  
25 merchants or third party payment processors, or in its Anti-Money Laundering/  
26 Bank Secrecy Act department, and continues to employ them in those roles. All  
27 non-monetary obligations required by this Consent Decree will terminate two years  
28 after a Permitted Change of Control.

1 **VI. CIVIL MONEY PENALTY**

2 **IT IS FURTHER ORDERED** that:

3 A. The Clerk is hereby ordered to enter judgment in the amount of One  
4 Million Dollars (\$1,000,000.00) (the “Penalty Amount”) in favor of the United  
5 States and against CommerceWest Bank as a civil money penalty.

6 B. The Bank shall pay the Penalty Amount to the United States by  
7 payment to the United States Treasury within fourteen days of entry of this Consent  
8 Decree by electronic funds transfer in accordance with instructions to be provided  
9 by a representative of the United States.

10 **VII. PAYMENT IN LIEU OF ADMINISTRATIVE FORFEITURE**

11 **IT IS FURTHER ORDERED** that:

12 A. CommerceWest Bank shall pay One Million Dollars (\$1,000,000.00)  
13 (the “Forfeiture Amount”) to the United States Postal Inspection Service’s  
14 Consumer Fraud Fund as proceeds of the conduct described in the Complaint. Such  
15 payment must be made within fourteen days of entry of this Consent Decree by  
16 electronic funds transfer in accordance with instructions to be provided by a  
17 representative of the United States. Such funds shall be moneys in which the Bank  
18 possesses exclusive ownership interest.

19 B. The Bank relinquishes all right, title, and interest in the funds described  
20 in Section VII.A, above. The Bank agrees and states that the funds described in  
21 Section VII.A, above, are forfeitable under 18 U.S.C. § 981(a)(1)(C) without need  
22 for further proceedings in support of such payment or forfeiture.

23 **VIII. ADDITIONAL MONETARY PROVISIONS**

24 **IT IS FURTHER ORDERED** that:

25 A. The Bank relinquishes dominion and all legal and equitable right, title,  
26 and interest in all assets transferred pursuant to this Consent Decree and may not  
27 seek the return of any assets.

1           B.     In the event that the Bank defaults on the Civil Money Penalty  
 2 provision of Section VI, or the Payment in Lieu of Administrative Forfeiture  
 3 provision of Section VII, the facts alleged in the Complaint will be taken as true in  
 4 any subsequent civil litigation by or on behalf of the United States to enforce its right  
 5 to any payment or forfeiture.

6           C.     The Bank acknowledges that its Taxpayer Identification Number,  
 7 which the Bank shall submit to the United States, may be used to collect and report  
 8 on any delinquent amount arising out of this Consent Decree, in accordance with 31  
 9 U.S.C. § 7701.

10 **IX. INTERNAL INVESTIGATION, RECCOMENDATIONS, AND**  
 11 **BOARD ACTIONS**

12           **IT IS FURTHER ORDERED** that no later than 30 days after the entry of the  
 13 Consent Decree, the Bank shall submit to the Court the name of outside counsel that  
 14 the Bank selects to conduct an internal investigation of the allegations in the  
 15 Complaint, and to make recommendations to the Board of Directors based on the  
 16 findings in the investigation. Outside counsel retained for this purpose shall be an  
 17 individual(s) selected on his or her merits, who, by reason of background, training,  
 18 education, or experience, is qualified to assess the Bank's conduct as it pertains to  
 19 the allegations in the Complaint, and who is without any personal or financial ties to  
 20 the Bank, its officers, directors, and employees.

21           Upon approval by the Court of the selection of outside counsel, outside  
 22 counsel shall investigate the allegations in the Complaint and report its findings and  
 23 recommendations to the Bank's Board of Directors. The Board of Directors shall  
 24 take all actions necessary to assure that the conduct alleged in the Complaint does  
 25 not occur in the future, and that the conduct of any of the Bank's officers, directors,  
 26 and employees is appropriately addressed; such actions where appropriate may, at  
 27 the discretion of the Board of Directors, include terminations from employment and  
 28 removals from positions of authority to eliminate the continued risk of similar

violations. All actions, including personnel actions, taken by the Bank's Board of Directors as a result of the internal investigation, shall be reported to the United States within ten days of the action being taken.

**X. COOPERATION IN FURTHER INVESTIGATIONS**

**IT IS FURTHER ORDERED** that, for a period ending five years after the date of the entry of the Consent Decree, the Bank shall cooperate fully and truthfully with the United States in any civil, criminal, and/or administrative investigations that involve the Bank's current and former officers, directors, and employees, the Bank's current and former Third-party Payment Processor customers, and the Bank's current and former Third-party Payment Processors' merchants. Upon reasonable notice, the Bank shall encourage and not impair the cooperation of its directors, officers, and employees, and shall not impair the cooperation of former directors, officers, and employees, for interviews and testimony, consistent with the rights and privileges of such individuals.

The Bank's cooperation requires that it incur only reasonable costs or burden associated with its cooperation, and shall include: (1) promptly providing to the United States upon request, without formal legal process (subject to any restrictions imposed by applicable law), all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control, concerning any matter under investigation by the United States, and (2) for a period of time ending three years after the entry of the Consent Decree, facilitating to the best of its ability interviews by the United States of the Bank's officers, directors, and employees to be interviewed by the United States in Washington, D.C., or another mutually agreed upon location, without waiver of any individual's rights and/or privileges.

**XI. SCOPE OF RESOLUTION**

**IT IS FURTHER ORDERED** that this Consent Decree resolves only the United States' civil claims against the Bank under FIRREA, 12 U.S.C. § 1833a, and 18 U.S.C. § 1345, in connection with the conduct alleged in the Complaint.

1 The Consent Decree does not release, or in any manner affect, other actual or  
 2 potential claims of the United States, including the following, which are specifically  
 3 reserved: (1) any criminal liability against the Bank, its officers, directors, or  
 4 employees, or any other individual or corporate entity; (2) any civil liability against  
 5 any individual or corporate entity, other than those alleged in the Complaint against  
 6 the Bank; (3) any liability arising under Title 26, U.S. Code (Internal Revenue  
 7 Code); (4) any administrative liability, including the suspension and debarment  
 8 rights of any federal agency; and (5) any liability to the United States (or its  
 9 agencies) whatsoever for any conduct other than civil claims against the Bank under  
 10 FIRREA, 12 U.S.C. § 1833a, and 18 U.S.C. § 1345.

11 Nothing in this paragraph or any other provision of this Consent Decree  
 12 constitutes an agreement by the United States concerning the characterization of the  
 13 civil money penalty for purposes of the Internal Revenue laws, Title 26 of the United  
 14 States Code.

15 The injunctive provisions of this Consent Decree are intended to supplement,  
 16 and not supersede, due diligence and other legal requirements imposed by state and  
 17 federal law.

## 18 **XII. ORDER ACKNOWLEDGMENTS**

19 **IT IS FURTHER ORDERED** that the Bank obtain acknowledgments of  
 20 receipt of this Order:

21 A. The Bank, within seven days of entry of this Consent Decree, must  
 22 submit to the United States an acknowledgment of receipt of this Consent Decree.  
 23 For five years after entry of this Consent Decree, the Bank must deliver a copy of  
 24 this Consent Decree to: (1) each principal, executive officer, and/or director; (2)  
 25 each manager, employee, agent, and/or representative who reviews or approves  
 26 agreements and applications of Third-party Payment Processors the merchants with  
 27 which the Third-party Payment Processor does business, and/or any Telemarketing  
 28 merchant or Internet-based Business with which the Bank transacts business; and (3)

any business entity resulting from any change in structure as set forth in Section XIV – Compliance Reporting. Delivery must occur within fourteen days of entry of this Consent Decree for current personnel. For all others, delivery must occur before they assume their responsibilities. From each individual or entity to which the Bank delivers a copy of this Consent Order, the Bank must obtain within 30 days a signed and dated acknowledgment of receipt of this Consent Decree.

### **XIII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring the Bank's compliance with this Consent Decree, the Bank must, within 30 days of receipt of request from a representative of the United States Department of Justice: (a) submit additional compliance reports or other requested information; (b) appear for depositions; and, (c) produce documents for inspection. Nothing in this section shall preclude the Bank from redacting from such documents any materials it reasonably believes is protected by the attorney work-product doctrine, attorney-client privilege, or other applicable privilege.

### **XIV. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that the Bank make timely submissions to the United States:

A. One year after entry of this Consent Decree, the Bank must submit to the United States a compliance report in which it: (a) designates the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the United States may use to communicate with the Bank; (b) describe in detail whether and how the Bank is in compliance with each Section of this Consent Decree; and (c) provide a copy of each Consent Decree Acknowledgment, described in Section XII, pursuant to this Consent Decree, unless previously submitted to the United States.

B. For five years after entry of this Consent Decree, the Bank must submit a compliance notice within 30 days after any change in the following: (a) any

1 designated point of contact; and (b) the structure of the Bank or any entity that the  
 2 Bank has any ownership interest in or that it controls directly or indirectly that may  
 3 affect compliance obligations arising under this Consent Decree, including:  
 4 creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or  
 5 affiliate that engages in any acts or practices subject to this Consent Decree.

6 C. The Bank must submit to the government notice of the filing of any  
 7 bankruptcy petition, insolvency proceeding, or any similar proceeding by or against  
 8 such the Bank within 30 days of its filing.

#### 9 **XV. RECORDKEEPING**

10 **IT IS FURTHER ORDERED** that the Bank must retain the following  
 11 records created or relating to the time period January 1, 2010, to the present, for five  
 12 (5) years from the entry of the Consent Decree:

13 A. All records relating to Third-party Payment Processors with which the  
 14 Bank has done business, and the merchants that have used such processors to  
 15 transact business through the Bank's facilities;

16 B. Personnel records showing, for each person who corresponded with,  
 17 reviewed, or authorized, transactions through Third-party Payment Processors,  
 18 whether as an employee or acting in another capacity on behalf of the Bank, that  
 19 person's: name; addresses; telephone numbers; job title or position; dates of service;  
 20 and (if applicable) the reason for termination;

21 C. Records of all returns for transactions processed through Third-party  
 22 Payment Processors;

23 D. Records of all consumer complaints, whether received directly or  
 24 indirectly, such as through a third-party, and any response; and

25 E. All records necessary to demonstrate full compliance with each  
 26 provision of this Consent Decree, including all submissions to the United States.

27 F. The records retention requirements of this Section are in addition to,  
 28 and not in lieu of, any other requirements imposed by state or federal law.



1 **XVI. SUBMISSIONS TO THE UNITED STATES**

2 **IT IS FURTHER ORDERED** that all submissions by the Bank to the United  
3 States Department of Justice required under this Consent Decree shall be in writing  
4 and delivered by hand or overnight courier to: Director, Consumer Protection  
5 Branch, U.S. Department of Justice, 450 Fifth Street, Washington, D.C. 20001.  
6 The Bank expressly acknowledges that the information obtained by the United  
7 States in connection with its investigation of the Bank, including information  
8 submitted by the Bank to the United States pursuant to this Consent Decree, may be  
9 shared for official purposes with federal, state, and local law enforcement, and other  
10 agencies and entities of the United States (including but not limited to the Federal  
11 Trade Commission, the Consumer Financial Protection Bureau, and other bank  
12 regulatory agencies).

13 **XVII. MODIFICATION OF THE CONSENT DECREE**

14 The Bank and/or the United States may petition the Court for modification of  
15 the Consent Decree.

16 **XVIII. RETENTION OF JURISDICTION**

17 **IT IS FURTHER ORDERED** that this Court retains exclusive jurisdiction  
18 of this matter for purposes of construction, modification, and enforcement of this  
19 Consent Decree.

20  
21 **ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
22  
23  
24

25 \_\_\_\_\_  
26 UNITED STATES DISTRICT JUDGE  
27  
28

1 CONSENTED TO BY:

2 

3  
4 **IVO TJAN**

5 Chairman and Chief Executive Officer,  
6 CommerceWest Bank

7 On behalf of CommerceWest Bank

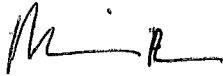
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9 **JEFFREY B. COOPERSMITH**

10 **MARK N. BARTLETT**

11 Davis Wright Tremaine LLP

12 Counsel for CommerceWest Bank

1 

2 **MICHAEL S. BLUME**

3 Director, Consumer Protection Branch

4 **RICHARD GOLDBERG**

5 Assistant Director, Consumer Protection Branch

6 **JOHN W. BURKE**

7 Trial Attorney, Consumer Protection Branch

8 United States Department of Justice

9 450 Fifth Street, NW, Suite 6400 South

10 Washington, D.C. 20001

11 Telephone: (202) 353-2001

12 Facsimile: (202) 514-8742

13 Email: Josh.Burke@usdoj.gov

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On behalf of the United States of America

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3 **STEPHANIE K. YONEKURA**

Acting United States Attorney

4 **LEON W. WEIDMAN**

5 Assistant United States Attorney

Chief, Civil Division

6 **ANOIEL KHORSHID**

7 Assistant United States Attorney (California Bar #223912)

8 300 N. Los Angeles Street, Suite 7516

Los Angeles, California 90012

9 Telephone: (213) 894-6086

10 Facsimile: (213) 894-7819

Email: Anoiel.Khorshid@usdoj.gov

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12 On behalf of the United States of America  
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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

No.:

Plaintiff,

v.

COMMERCEWEST BANK,

Defendant.

**CONSENT DECREE COMPLIANCE CERTIFICATION**

The undersigned certifies, pursuant to Section IV of the Consent Decree entered by the United States District Court for the Central District of California on \_\_\_\_\_, 2015, in the above captioned matter that:

1. CommerceWest Bank has provided or is providing bank accounts or banking services to the following Third-party Payment Processor(s), as defined in Paragraph K of Section II of the aforementioned Consent Decree:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

2. The Third-party Payment Processor(s) identified above is: (i) licensed as a money transmitter in the state(s) into and from which money is transferred, or has provided to CommerceWest Bank documentation created by state licensing authorities stating that no state licensing is required; and (ii) registered with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury ("FinCEN") as a "Money Services Business," or

1 has provided to the Bank documentation from FinCEN stating that no  
2 registration is required;

3 3. CommerceWest Bank is conducting due diligence and monitoring of the  
4 merchants of the Third-party Payment Processor(s) identified above as if  
5 these entities were direct customers of CommerceWest Bank;

6 4. Prior to providing any banking accounts or banking services and quarterly  
7 thereafter, CommerceWest Bank has conducted due diligence of any  
8 merchant engaged in Telemarketing or Internet-based Businesses (directly or  
9 through a Third-party Payment Processor) as if these entities were direct  
10 customers of CommerceWest Bank;

11 5. Prior to providing any banking accounts or banking services and quarterly  
12 thereafter, CommerceWest Bank has established, after reasonable inquiry, in  
13 good faith, and to the best of CommerceWest Bank's ability and knowledge,  
14 that any merchant engaged in Telemarketing or Internet-based Business:

- 15 a. Is in compliance with any applicable licensing or registration  
16 requirement of the state(s) (or tribal territories) in which the merchant  
17 is located and in which the merchants customers are located; and  
18 b. Is not engaged in fraudulent, unfair, deceptive, or abusive business  
19 practices against consumers in violation of federal law or any such  
20 law of the state(s) (or tribal territory) in which the merchant is located,  
21 and any such law of the state(s) (or tribal territories) in which the  
22 merchant's customers are located;

23 6. CommerceWest Bank has memorialized in writing the conclusions of the  
24 due diligence and investigation of the merchants of the Third-party  
25 Payment Processor(s) identified above, as required by Section III.C.4 and,  
26 if applicable, Section III.D.4, of the Consent Decree, and such information  
27 is available to the United States Department of Justice for inspection; and  
28

1 7. CommerceWest Bank, as an Originating Depository Financial Institution, is  
2 not accepting from a customer or Third-party Payment Processor any  
3 Remotely-created Checks or Remotely-created Payment Orders in connection  
4 with Telemarketing or Internet-based Business.  
5

6 The undersigned further certifies that he/she has authority to bind  
7 CommerceWest Bank for the purposes of this certification.  
8

9 I declare under the penalty of perjury that the foregoing is true and correct.  
10

11 \_\_\_\_\_  
12 Name: \_\_\_\_\_

13 Title: \_\_\_\_\_

14 Date: \_\_\_\_\_  
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